No. 15,148

United States Court of Appeals
For the Ninth Circuit

SWITCHMEN'S UNION OF NORTH AMERICA, GENERAL ADJUSTMENT COMMITTEE—SOUTHERN PACIFIC COMPANY, SWITCHMEN'S UNION OF NORTH AMERICA; NEIL T. SPEIRS, as International Vice President, Switchmen's Union of North America, and JOHN R. BURGE, as General Chairman and as Acting General Chairman, Switchmen's Union of North America,

Appellants,

vs.

SOUTHERN PACIFIC COMPANY, a corporation; BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; THE GENERAL COMMITTEE, BROTHERHOOD OF RAILROAD TRAINMEN, a voluntary association; J. J. CORCORAN, as General Chairman, General Committee, Brotherhood of Railroad Trainmen; J. E. TEAGUE, as Secretary, General Committee, Brotherhood of Railroad Trainmen,

Appellees.

APPELLEES' BRIEF.

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Subject Index

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Appellees.

APPELLEES' BRIEF.

JURISDICTION.

The District Court had jurisdiction of this action pursuant to 28 U.S.C.A. Sec. 1332, Sec. 1337, Sec. 2201. Southern Pacific Company, a corporation, plaintiff, is a corporation organized and existing under the laws of Delaware (T.R. 4, 42). The defendants are residents and citizens of states other than Delaware (T.R. 4, 5, 43). Exclusive of interest and costs the

amount in controversy exceeds the sum of $3,000.00. The case therefore involves diversity of citizenship for a sum in excess of the jurisdictional requirement, 28 U.S.C.A. Sec. 1332 (T.R. 43).

This court has jurisdiction of this appeal under 28 U.S.C.A. Sec. 1291.

QUESTION INVOLVED.

The only issue or question involved in this appeal is clearly stated in the memorandum opinion filed by the District Court, and is:

Whether under the Railway Labor Act, as amended in 1951, (45 U.S.C.A. Sec. 151 et seq.) an agreement was lawfully entered into between the Southern Pacific Company and the Brotherhood of Railroad Trainmen, which agreement provides for the deduction of "periodic dues, initiation fees, assessments and insurances" from the wages of members of the Brotherhood of Railroad Trainmen who are employed by the Southern Pacific Company, notwithstanding the fact that certain of the members of that Union on occasions work as yardmen and are therefore subject to the collective bargaining agreement between Southern Pacific Company and the Switchmen's Union of North America* (T.R. 35). And see opinion, appendix.

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*The National Mediation Board has certified the Switchmen's Union of North America, a voluntary association, as the exclusive collective bargaining representative of the craft of yardmen.

SUMMARY OF ARGUMENT.

Throughout the balance of this brief the Brotherhood of Railroad Trainmen will be referred to as B.R.T. and the Switchmen's Union of North America will be referred to as S.U.N.A.

It is the position of the appellees that the agreement between the Southern Pacific Company and B.R.T. which provides for the deduction of periodic dues, initiation fees, assessments and insurance from the wages of employees of the Southern Pacific Company who are members of the B.R.T. is a lawful and valid agreement. That such an agreement is in accord with the proper interpretation of the provisions of the Railway Labor Act (45 U.S.C.A. 151 et seq.) as amended.

Section 2 Eleventh (b) of the Railway Labor Act authorizes the making of dues deduction agreements. It is the contention of the appellees that the only logical and effective application of this permission to make dues deduction agreements is to read that permissive section with the next following subsection of Section 2 Eleventh, which is Section 2 Eleventh (c) (45 U.S.C.A. 152 Eleventh (c)). That section provides and means that the requirement of membership in a labor organization under a union shop agreement can be satisfied as to any individual employee working as a yardman, if he maintains membership in the B.R.T., because the B.R.T. is an organization national in scope, organized in accordance with the Act and admits to membership employees of a craft or class in any of the four services referred to in the Act, engine,

train, yard or hostling. Being such an organization the B.R.T. thus has the right to enter into a dues deduction agreement with the employer Southern Pacific Company.

To hold otherwise would prevent a logical application of the amended statute. For, due to the frequent change of work by the employee in operating service from one class to the other, that is, from yard service to train service and vice versa, there would be a constant conflict which would, in effect, nullify the permission granted by the amended Act to enter into such agreements.

ARGUMENT.

I.

THE RAILWAY LABOR ACT PROVIDES FOR CHECK-OFF OF DUES AGREEMENTS, WITH QUALIFIED LABOR ORGANIZATIONS WHETHER OR NOT THAT ORGANIZATION IS THE DESIGNATED COLLECTIVE BARGAINING UNION.

Section 2 Eleventh, of the Railway Labor Act (45 U.S.C.A. Sec. 152 Eleventh) provides:

> "Notwithstanding any other provision of this chapter * * * any carrier or carriers defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirement of this chapter shall be permitted * * *.
>
> "(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing

the craft or class of such employees, of any periodic dues, initiation fees, and assessments * * *.

"(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership."

The provisions of the above Act make it clear that (1) check-off of dues is permissible (45 U.S.C.A. Sec. 152 Eleventh (b)) when an employee is a member of a labor organization national in scope, organized in accordance with the Railway Labor Act, admitting to membership employees of a craft or class in the four services, engine, train, yard, hostling, (45 U.S.C.A. Sec. 152 Eleventh (c)); (2) when the check-off of dues is made payable to the labor organization of which the employee is a member (45 U.S.C.A. 152 Eleventh (c)).

Those employees of the Southern Pacific Company who are members of the B.R.T. and maintain their membership in that organization certainly satisfy the union shop agreement, for the B.R.T. is the collective bargaining agent for the craft of trainmen (T.R. 5). There can be no other reasonable interpretation of the foregoing provisions of the Railway Labor Act. The amendment of 1951 expands the Act for the benefit of any labor organization that qualifies as a labor organization, national in scope, organized in accordance with the Labor Railway Act, and admitting to membership employees of the craft or class in any of said four services involved and which is the collective bargaining agent for any one of the three separate crafts of employees. The B.R.T. is such an organization (T.R. 5).

Section 2 of the Railway Labor Act (Section 152 of 45 U.S.C.A. 478) provides that "employees shall have the right to organize and bargain collectively through representatives of their own choosing", and provides that there shall be freedom from interference by the carrier and the general deduction of dues from wages are forbidden.

However, the preceding section is qualified by the 1951 amendment to the act known as the "Union Security and Check-Off Agreements" (Section 2, Eleventh (a), (b), (c) of 45 U.S.C.A. 481-482) and this qualification allows a "labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirements of the Railway Labor Act" to make agreements, etc.:

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership; *Provided,* That no such agreement shall be effective with respect to any individual employee until he shall have furnished the employer with a written assignment to the labor organization of such membership dues, initiation fees, and assessments, which shall be revocable in writing after the expiration of one year or upon the termination date of the applicable collective agreement, whichever occurs sooner."

Under this Union Security Agreement the duly designated labor organization authorized to represent employees in accordance with the requirements of the Railway Labor Act shall be permitted (a) to make agreements that within 60 days following beginning of employment, all employees shall become members of the labor organization representing their craft or class.

(c) That the above requirements of membership in a labor organization shall be satisfied "if said employee shall hold or acquire membership in any one of the labor organizations, national in scope admitting to membership employees of train, engine and yard service.

The organizations admitting to membership employees in train, engine and yard service are the

Brotherhood of Railroad Trainmen, the Switchmen's Union of North America, the Order of Railway Conductors and Brakemen, the Brotherhood of Locomotive Firemen and Enginemen and the Brotherhood of Locomotive Engineers (T.R. 91, 92, 93).

In the light of the above provisions a yardman may belong to the Brotherhod of Railroad Trainmen or the Switchmen's Union of North America or the Order of Railway Conductors and Brakemen. If he belongs to any one of these organizations he can qualify as coming under the Union Shop provisions of the Act (Section 2 Eleventh (c)) of the Railway Labor Act, 45 U.S.C.A. 482, Section 152. This is so by the clear terms of the Act, even though the bargaining agreement is held by the Switchmen's Union of North America or by the Order of Railway Conductors and Brakemen (T.R. 91, 92, 93).

Similarly, a locomotive fireman working under a contract held by the Brotherhood of Locomotive Engineers could qualify under the Union Shop Agreement by belonging to the Brotherhood of Locomotive Firemen and Engineman or by belonging to the Brotherhood of Locomotive Engineers, or an engineer working under a contract held by the Brotherhood of Locomotive Firemen and Enginemen could qualify under a Union Shop agreement by belonging to the Brotherhood of Locomotive Firemen and Enginemen or the Brotherhood of Locomotive Engineers (T.R. 91).

The above latitude is allowed operating employees in selecting one of the qualifying organizations in

which to hold membership irrespective of the organization representing the craft in which he is employed.

Thus, the statute allows members of the operating crafts to belong to a non-representing union. It was obviously the intention of Congress with regard to these members of the operating crafts to permit cross-membership and allow the worker to belong to whichever union he wishes to. It follows logically and obviously that he should be allowed to assgin the money to pay his dues to that union. It would be utterly unworkable and contrary to the purpose and idea of the statute in allowing this cross-membership and to refuse to allow the assignment of dues to the union to which the man belongs. It may well be that such an interpretation could be made where there would only be one union to which the man could possibly belong, as in the non-operating crafts. For example, if the man could only belong to the railway clerks or the machinists, obviously it wouldn't be proper for some other union to be authorized to collect his dues, but the situation with the operating crafts is entirely different.

It was also obvious that in the minds of those who drafted this legislation that there was a reason for excepting the operating crafts because of the fluctuation in business and the dual capacity in which these men have occasion to work. The cross-representation provisions of the statute would be utterly unworkable and the dues deduction authority would be meaningless if it were handled on any other basis than through

membership in an authorized union irrespective of whether that union happened to hold the contract with regard to the particular capacity in which the man might be working at any given time.

Under the terms of the Dues Deduction Agreement, identified as Company File TRN 1-685 (T.R. 9, 10, 11, 12, 13, 14, 15) effective August 1, 1955, paragraph 1 (a) thereof merely provides for the deduction of dues payable to the Brotherhood of Railroad Trainmen by its members from wages earned in any of the services or capacities covered in Section 3, First (h) of the Railway Labor Act, defining the jurisdictional scope of the First Division, National Railroad Adjustment Board. Conductors hold seniority as brakemen on their respective seniority districts and, likewise, brakemen, following promotion to conductors, hold seniority as conductors. For example, a brakeman who holds seniority as a conductor may work a portion of a month as a brakeman and a portion of the month as conductor. Similarly, he may hold a conductor's job for several months and thereafter return to his position as a brakeman (T.R. 99, 108). Obviously, if such an employee has signed a Wage Assignment Authorization payable to the Brotherhood of Railroad Trainmen, of which he is a member, it would be inconsistent for the carrier to deduct from earnings as a brakeman in one pay roll period and not be able to deduct from earnings as a conductor in another pay roll period when remitting to the Treasurer of the Local Lodge of the Brotherhood of Railroad Trainmen as provided in the Agreement. It may well

be that this man would be working under two different contracts, one to be held by the Brotherhood of Railroad Trainmen when he was working as a brakeman and the other possibly to be held by the Order of Railway Conductors and Brakemen when he was working as a conductor, but there would be a complete snarl if the dues deduction arrangement would depend upon the capacity in which he was working, rather than upon the membership in the particular organization.

Likewise, the same situation would exist if a brakeman would work for a period of time in the yard service or a yardman work for a period of time as brakeman in road service. In the one instance he might be working in yard service under the contract of the Switchmen's Union of North America and in the other instance he may be working in road service under the contract of the Brotherhood of Railroad Trainmen, but in either event the only practical way to make a dues deduction which he authorizes, is to recognize the organization to which he belongs and to which he has a right to belong under the union shop arrangement, with reference to the operating crafts. Any other interpretation would make the dues deduction arrangement so complicated and so inconsistent with the idea of the right to belong to any of the operating crafts at the employee's option that it cannot be believed that it was the intention of the drafters of this legislation that any such result would follow.

Under the provisions of Section 2, Eleventh (b) of the Railway Labor Act the Brotherhood of Railroad

Trainmen was authorized to negotiate with the Southern Pacific Company a Dues Deduction Agreement for the reason that this organization represents the craft or class of trainmen on the Southern Pacific (T.R. 5). Paragraph (b) in other words, would exclude any organization not representing a craft or class of employees in engine, train, yard or hostling service, engaged in any of the services defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, from entering into a Dues Deduction Agreement with the Southern Pacific. In addition, an organization authorized to enter into a Dues Deduction Agreement is similarly prohibited, under Section 2, Eleventh (c), from deducting dues from employees who do not hold membership in the organization. There is, however, nothing contained in the language of Section 2, Eleventh (b), prohibiting such organization, authorized to make a Dues Deduction Agreement, from having wage assignments made payable to the organization by its members from wages earned in any of the services or capacities covered in Section 3, First (h), of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board. The only other requirement of Section 2, Eleventh (b) is that the wage assignment authorization for deduction of dues payable to the organization must be voluntary upon the part of the individual employee.

II.

INTERCHANGEABLE NATURE OF EMPLOYMENT AND LEGISLATIVE HISTORY ESTABLISH THE RIGHT OF THE B.R.T. TO ENTER INTO CHECK-OFF OF DUES AGREEMENT WITH THE SOUTHERN PACIFIC COMPANY.

As pointed out above, the record in this case shows that in the railroad industry men whose principal employment is of one craft, for example, the craft of brakeman, are occasionally and sometimes frequently employed as members of another craft, for example, as conductors or as yardmen.

Employees who work interchangeably in the separate mentioned crafts nevertheless satisfy the union shop requirements according to Section 2, Eleventh (c) of the Railway Labor Act if they maintain membership in any one of the organizations which holds a contract for any of the three separate crafts of employees. Thus, a brakeman working as a conductor need not become a member of the Order of Railway Conductors and Brakemen in order to work as a conductor, or a member of S.U.N.A. in order to perform temporary work as a yardman. Consequently, through the qualified organization in which he maintains a membership, the employee can authorize dues deductions. The argument of S.U.N.A. is, however, that when such an employee is working as a yardman or a conductor he cannot be a party to a dues deduction agreement in favor of the B.R.T. even though he is a member of the organization which holds the collective bargaining agreement for the craft (trainmen) in which he regularly works. It is evident that if this

view were to be upheld the dues deduction provision instead of affording a measure of protection for an individual employee against the possibility of being in default in his dues and therefore subject to discharge, would engender a false sense of security and might lead to the employee's being in default although he had considered that he was fully protected.

Appellants have at some length discussed the legislative history of Section 2, Eleventh of the Railway Labor Act and have made mention of the arguments presented by Mr. Harry See, Legislative Representative of the B.R.T., before the Senate and House Committee and also of the arguments of Mr. George M. Harrison, representing the non-operating unions. However, at page 26 of their brief it is stated that:

> "Congress did not adopt either the amendment proposed by the B.R.T. or the bills originally sponsored by Mr. Harrison on behalf of the Railway Labor Executives Association."

It is apparent that both the House of Representatives and the Senate considered the arguments of both parties and then adopted the statute in its present form, which in effect adopts the position urged by Mr. See, by requiring that dues deductions are to be paid only to the union of which the employee is a member.

With reference to the remarks of Mr. Harrison of the Railway Clerks, they cannot be considered significant with respect to the question here involved. The Brotherhood of Railway Clerks for which Mr.

Harrison was speaking is one of the non-operating unions representing employees who do not have any duties directly connected with movement of trains, engines or cars and particularly in representing any of the employees specifically referred to in Subsection (c) of Section 2, Eleventh of the Railway Labor Act; that is, employees in engine, train, yard or hostling service. There is relatively little, if any, movement of employees from one craft to another, for example, from clerks to telegraphers or maintenance of way to shop crafts such as takes place between the operating crafts mentioned in Subsection (c). The remarks of Mr. Harrison were addressed particularly to the situation of the non-operating employees, the employees represented by the Brotherhood of Railway Clerks of which he is the President and Chief Executive Officer. Mr. Harrison obviously was not interested in the essentially different situation of the operating employees for which the special provisions of Subsection (c) were enacted.

It is clearly apparent that it was the intent of Congress that Subsection (b) of Section 2, Eleventh, upon which S.U.N.A. relies should and must be read with Subsection (c) in order not to nullify or impair the provisions of the latter section which operates to benefit and protect employees in the classes of service covered by Subsection (c).

The union shop amendment was intended to be primarily for the benefit of labor organizations. However, Congress certainly did not intend thereby to

impair or prejudice the rights of the operating employees to work in more than one craft or class of service as these rights existed prior to the amendment, which would certainly happen if the amendment was to be interpreted as contended for by the appellant.

To argue, as the appellant does, that there is no prejudice to the employee because he can voluntarily pay his dues to the organization of which he is a member, begs the question. The employee has the right to join the organization of his choice, and so long as that organization is qualified under the provisions of the Railway Labor Act, he has the right under the amendment to authorize his employer to deduct and check-off to that union his dues assessments, etc. If any other interpretation was to be placed on the permission granted in the amendment to make such agreements, it would nullify that permission. The right of the employee to authorize dues deductions, keeps him paid up and in good standing with his organization and keeps his insurance paid so that he is protected at all times. To deprive him of that right to protect himself simply because he was not a member of the union representing the craft of his work would definitely be prejudicial. This would be particularly so if the employee was of unsteady habits or forgetful because then to protect himself against these frailties he would be forced to join the union holding the bargaining agreement. Certainly, no such result was intended by the drafters of the amendment.

CONCLUSION.

In conclusion, it is urged that the only logical and practical interpretation of the Railway Labor Act as amended, is that made by the District Court and set out in its opinion filed herein which holds that the check-off of dues agreement entered into between the B.R.T. and the Southern Pacific was legal, and that, "the employee is not tied as far as payment of dues is concerned to the union holding the contract with the carrier, but rather to the union in which he holds membership." This is the same interpretation that has been placed upon the amendment by other operating unions and other railroads throughout the country (T.R. 94, 95). The Order of Railway Conductors and Brakemen have an identical check-off agreement (Tr. 100) and the S.U.N.A. has an identical agreement with Southern Pacific covering its members and applicable to those who might work at times in train service. It is therefore respectfully submitted that the judgment of the District Court be affirmed.

Dated, Oakland, California,
September 28, 1956.

HILDEBRAND, BILLS & MCLEOD,
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Of Counsel.

(Appendix Follows.)

Appendix.

Appendix

In the United States District Court for the Northern District of California, Southern Division

Southern Pacific Company, a corporation, Plaintiff, vs. Switchmen's Union of North America, a Voluntary Association, et al., Defendants.	No. 35,058

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MEMORANDUM OPINION

Roche, Chief Judge:

This is an action for declaratory relief brought by plaintiff, Southern Pacific Company, against the defendants Switchmen's Union of North America (hereinafter referred to as Switchmen's Union) and the Brotherhood of Railroad Trainmen (hereinafter referred to as the Trainmen's Union). This court has jurisdiction of the subject matter because this suit arises under a law regulating commerce, the Railway Labor Act (Title 45 U. S. C., Sec. 151 et seq.), particularly Sec. 2, Eleventh of said Act (45 U. S. C., Sec. 152, Eleventh). The complaint in said action alleges that the amount involved in controversy exceeds $3,000.00.

The defendants have moved for summary judgment and the Court will dispose of this matter on the record before it. The only issue presented is the legal one of whether under the Railway Labor Act (45 U. S. C., Sec. 151, et seq.) an agreement was lawfully entered into between the Southern Pacific and the Trainmen's Union, which agreement provides for the deduction of dues of members of the Trainmen's Union who are in the employ of the Southern Pacific, notwithstanding the fact that certain members of the Trainmen's Union are working as yardmen, and therefore are subject to the collective bargaining agreement between the Southern Pacific and the Switchmen's Union.[1]

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[1]The National Mediation Board has certified the Switchmen's Union as the exclusive collective bargaining representative of the craft of yardmen.

The agreement in question was entered into on June 23, 1955, effective August 1, 1955 and provides that the Southern Pacific will check off and pay over to the Trainmen's Union "periodic dues, initiation fees, assessments and insurance" from the wages of all members of the Trainmen's Union employed by the Southern Pacific "in any of the services or capacities covered in Section (3) First (h) of the Railway Labor Act defining the jurisdictional scope of the First Division, National Railroad Adjustment Board, upon the written and unrevoked authorization of a member." The carrier and the Trainmen's Union have applied the above described check-off agreement to the craft or class of yardmen at all times since the effective date of the agreement and the Southern Pacific has checked-off and paid over to the Trainmen's Union the dues, initiation fees, assessments and insurance of such of the yardmen as joined or were members of the Trainmen's Union and authorized such check-off. The Switchmen's Union entered into an identical agreement with the Southern Pacific on August 8, 1955, to be effective as of September 1, 1955.

On September 8, 1955 the Switchmen's Union took the position that the above check-off agreement violated Section 2, Fourth of the Railway Labor Act insofar as it was applicable to yardmen. The Switchmen's Union asked the Southern Pacific to cease giving effect to the agreement insofar as it applied to yardmen. Southern Pacific refused so to do, and in order to resolve the controversy filed this suit for declaratory relief.

Section 2, Fourth, of the Railway Labor Act (45 U. S. C. A., Sec. 152, Fourth) insofar as here relevant provides:

"it shall be unlawful for any carrier * * * to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions."

Section 2, Eleventh, of the Railway Labor Act (45 U. S. C. A., Sec. 152, Eleventh) insofar as here relevant provides:

"Notwithstanding any other provision of this chapter * * * any carrier or carriers defined in this chapter and a labor organization or labor organizations duly designated and authorized to represent employees in accordance with the requirement of this chapter shall be permitted—

* * *

"(b) to make agreements providing for the deduction by such carrier or carriers from the wages of its or their employees in a craft or class and payment to the labor organization representing the craft or class of such employees, of any periodic dues, initiation fees, and assessments * * *.

["(c) The requirement of membership in a labor organization in an agreement made pursuant to subparagraph (a) of this paragraph shall be satisfied, as to both a present or future employee in engine, train, yard, or hostling service, that is, an employee engaged in any of the services or capacities covered in the

First Division of paragraph (h) of section 153 of this title, defining the jurisdictional scope of the First Division of the National Railroad Adjustment Board, if said employee shall hold or acquire membership in any one of the labor organizations, national in scope, organized in accordance with this chapter and admitting to membership employees of a craft or class in any of said services; and no agreement made pursuant to subparagraph (b) of this paragraph shall provide for deductions from his wages for periodic dues, initiation fees, or assessments payable to any labor organization other than that in which he holds membership:] * * *

[That nothing herein or in any such agreement or agreements shall prevent an employee from changing membership from one organization to another organization admitting to membership employees of a craft or class in any of said services.]

[(d) Any provisions in paragraphs Fourth and Fifth of this section in conflict herewith are to the extent of such conflict amended.]

It is Southern Pacific's and the Trainmen Union's position that Section 2, Eleventh (b) of the Railway Labor Act which authorizes the making of dues deduction agreements generally, must be read in conjunction with the next following subsection of Section 2, Eleventh. The latter (Scetion 2, Eleventh (c)) specifically provides that the requirement of membership in a labor organization, under a union shop agreement made pursuant to the Act, shall be satisfied, as to employees in engine, train, *yard,* or hostling serv-

ice, if the employee holds or acquires membership in any one of the labor organizations national in scope, which are organized in accordance with the act and admit to membership employees of a craft, or class in any of the said four services.

The record in this case reveals that in the railroad industry men whose principal employment is in one craft, for example, the craft of brakemen, are occasionally, and sometimes frequently employed as members of another craft, for example, as conductors or as yardmen. In view of the interchangeable nature of the employment, it would seem that the only reasonable and workable interpretation of the statutes herein considered is that the union to which said man belongs shall have the right to enter a dues deduction agreement with the carrier, a right which is provided for in all of the contracts shown to the Court, including the contract of the Switchmen's Union itself.

Substantiating this conclusion is the report of the Committee on Labor and Public Welfare in Senate Report No. 2262 (81st Cong., Second Session, 1950, page 4319) in which is set forth the purposes and background of the legislation now before the court for construction and which states in part as follows:

"S. 3295 is intended to relax the prohibition contained in paragraphs fourth and fifth of Section 2 of the Railway Labor Act against all forms of union security agreements and against the deduction from the wages of employees of 'any dues, fees, assessments, or other contributions payable to labor organizations.'

* * *

The bill would also permit a carrier and a labor organization duly authorized to represent employees under the act to enter into agreements providing for the check-off from the wages of employees of periodic dues, initiation fees, and assessments. Here, too, the bill does not impose such an agreement; it merely permits a carrier and a labor organization, through the voluntary processes of collective bargaining, to include a check-off provision in the collective contract.

The present prohibitions against all forms of union security agreements as devices for establishing and maintaining company unions, thus effectively depriving a substantial number of employees of their right to bargain collectively. It is estimated that in 1934 there were over 700 agreements between the carriers and unions alleged to be company unions. These agreements represented over 20 percent of the total number of agreements in the industry.

It was because of this situation that labor organizations agreed to the present statutory prohibitions against union security agreements. An effort was made to limit the prohibition to company unions. This, however, proved unsuccessful; and in order to reach the problem of company control over unions, labor organizations accepted the more general prohibitions which also deprived the national organizations of seeking union security agreements and check-off provisions. It is thus clear that these organizations did not oppose union security and check-off agreements as such but merely their use as a means of carrier control over the bargaining process.

Since the enactment of the 1934 amendments, company unions have practically disappeared. Labor organizations representing employees in industries covered by the Railway Labor Act now seek to gain for themselves the right to bargain collectively with regard to union-shop agreements and check-off. This right is possessed by unions representing employees in industry generally. Your committee is of the opinion the right should now be extended to labor organizations subject to the Railway Labor Act.]''

It can be seen from the above that the abuse at which prior legislation had been directed was the use of dues deduction agreements as a means of carrier control over the bargaining process. Since company unions ''have practically disappeared'' it was the legislature's intent to give ''labor organizations covered by the Railroad Labor Act * * * the right to bargain collectively with regard to union-shop agreements and check-off'', a right possessed by unions representing employees in industry generally.

In conclusion, the Railway Labor Act, Section 2, Eleventh, Subdivision (c) (45 U. S. C. A., Sec. 152, Eleventh (c) provides that no agreements for deductions from an employee's wages or dues, initiation fees, or assessments are to be made by the carrier payable ''to any labor organizaton other than that in which he holds membership.'' This provision, considered in the light of the overall legislative intent to give the railroad unions the rights possessed by union in industry generally, indicates that the employee is not tied as far as payment of dues is concerned to the

union holding the contract with the carrier, but rather to the union in which he holds membership.

In accord with the foregoing it is hereby declared that the said "Dues Deduction Agreements" hereinabove described are wholly valid and enforceable, and in accordance with the terms of the Railway Labor Act.

Dated: March 5, 1956.

Michael J. Roche
Chief Judge, U. S. District Court